

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Perri Lemon,

Plaintiff,

versus

Liberty Life Assurance Company of Boston,

Defendant.

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Civil Action H-07-1291

Opinion on Summary Judgment

Perri Lemon appeals Liberty Life Assurance Company of Boston's decision to terminate her benefits under ERISA. The decision must be upheld unless Liberty abused its discretion; that is, Liberty's decision must have no rational connection to the known facts. *Bellaire Gen. Hosp. v. Blue Cross Blue Shield of Mich.*, 97 F.3d 822, 828 (5th Cir. 1996).

Liberty based its decision on an independent medical examination, surveillance reports including video tapes, a vocational analysis, and reviews by consulting physicians. The results, at the very least, show a rational connection between Liberty's decision and the known facts. Indeed, it might well have been irrational for Liberty to make any other decision.

For instance, Lemon was examined by Dr. Barry Nelms. Nelms noted that Lemon used a cane to walk and walked very slowly. He also noted she reported significant back pain from slight movements. He concluded she was unable to work.

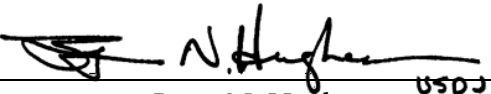
Liberty visually recorded Lemon walking without a cane, carrying small dogs, taking out the trash, cleaning her garage, and similar activities. Some of the recordings occurred on the same day Lemon was examined by Nelms. Liberty forwarded him the video. Nelms amended his previous conclusion and said that she could work. He noted the differences between Lemon's behavior in his office and her behavior in the video. For instance, the video showed her bending, stooping, and leaning without difficulty and walking without the assistance of a cane or crutch. She also kneeled in the video, which she had claimed she was unable to do at all.

While there is much more evidence that Lemon was exaggerating her condition to avoid

having to work, the video and Nelms amended conclusions suffice to show conclusively that Liberty did not abuse its discretion in terminating Lemon's benefits.

Lemon and her lawyer have persisted in a fraudulent claim. Lemon will take nothing from Liberty Life Assurance Company of Boston.

Signed on September 23, 2007, at Houston, Texas.



Lynn N. Hughes
United States District Judge